

spent portions of her undergraduate years studying in England, Switzerland, and China. Following law school, she clerked on the Alaska Superior Court and then entered private practice in the Anchorage office of Preston Gates & Ellis. As a private practice attorney, she represented the State of Alaska in the litigation that followed the 1989 Exxon Valdez oil spill.

As a member of the superior court bench, she served as the presiding judge of the Third Judicial District there in Anchorage which, as was noted, is the busiest judicial district in the State of Alaska. She held that position for 4 years. As a supreme court justice, she is deeply engaged in community outreach. In fact, she won the Alaska Supreme Court Community Outreach Award back in 2008. She also holds the Light of Hope Award for work on behalf of Alaska's children. I think her voluntarism has been acknowledged and highlighted. Not only does she meet the demands of a busy bench practice, but also takes the time, with her family, to be very engaged in our community.

I inquired with some of my friends, former colleagues on the Alaska bar, about her reputation in anticipation of my comments today. One Alaskan stated:

Morgan is extraordinarily talented and is well respected by her peers. She constantly brings justice and fairness to her professional and personal life. Friends and colleagues across the country have savored her wild raspberry jam.

I have yet to have the opportunity to savor her wild raspberry jam. I do a pretty mean raspberry jam myself, so I think we are going to have to trade and see. But it is yet one more aspect about this pretty amazing woman I wanted to share today.

Another colleague stated, very simply, that she is a calm, thoughtful, and strong woman. Good words.

In closing, let me simply say that Morgan Christen is more than just a good judge; she is a good person. Justice will be well served by her confirmation to the Ninth Circuit U.S. Court of Appeals. I urge my colleagues to support this nomination with enthusiasm, as I do.

Mr. President, I yield the floor.

Mr. GRASSLEY. Mr. President, today the Senate is expected to confirm an additional judicial nominee. With this vote, we will have confirmed 62 article III nominees during this Congress. More than half of these have been for vacancies designated as judicial emergencies. That is real progress. Over 72 percent of President Obama's judicial nominees have been confirmed.

Morgan Christen is nominated to be U.S. circuit judge for the Ninth Circuit. Justice Christen received her B.A. from the University of Washington in 1983, and her J.D. from Golden Gate University Law School in 1986. After graduating from law school, she clerked for the Hon. Brian Shortell on the Alaska Superior Court in Anchorage.

In 1987 she was hired at Preston Gates & Ellis LLP, working as an associate until 1992. She was a partner in the firm from 1993 to 2002. At that firm she was a general civil litigator, primarily representing plaintiffs. She began by assisting with large litigation projects. One of her most notable early matters involved serving on the liability team representing the State of Alaska in its claims for compensation arising from the Exxon Valdez oil spill. After the State settled its liability claim in 1991, she defended claims brought by individuals who argued the State's response to the spill was inadequate.

By the time Justice Christen became a partner in 1993, she had developed a practice in Jones Act personal injury claims and was lead counsel in a case in the U.S. Court of Claims representing the parents of an infant who died after receiving a childhood vaccination. She also served as lead counsel on four aviation fatality cases between 1993 and 1999, representing the estate of an FAA employee who was killed in a mid-air collision, the estate of a pilot killed during a catastrophic engine failure and in-flight failure, among others. She has also served as the lead counsel in the Equal Pay Act and represented a fuel barge line in several commercial disputes. Finally, from 1999 to 2001 over half of her practice was devoted to defending two physician practice groups in a Federal Medicaid fraud investigation and related False Claims Act case, and assisting with the defense of a class action antitrust case brought against purchasers of salmon harvested in Alaska.

In 2001 she was appointed to the Alaska Superior Court, where she served from January 9, 2002, until her elevation to the supreme court in 2009. The superior court is the court of general jurisdiction in Alaska. As a superior court judge, her docket was comprised entirely of civil cases. From 2005 to 2009 she served as presiding judge of the Third Judicial District of the Superior Court. In this position she supervised approximately 40 judicial officers in 13 court locations.

Justice Christen was appointed to the Alaska Supreme Court on March 4, 2009, and has been a member of that court from April 6, 2009, to the present. She was nominated for that seat by the Alaska Judicial Council, composed by three members of the bar, three members of the public appointed by Governors, and the chief justice. She was then selected from a slate of two nominees by Governor Sarah Palin.

The American Bar Association Standing Committee on the Federal Judiciary has rated Justice Christen with a unanimous "well qualified" rating.

Mr. LEAHY. Mr. President, how much time is remaining on the judgeship?

THE PRESIDING OFFICER. On the Republican side, there is 7 minutes 16 seconds; on the Democratic side, 3 minutes 52 seconds.

Mr. LEAHY. Mr. President, I want to reiterate what I said before about Senator MURKOWSKI and Senator BEGICH for their support of this woman for the Ninth Circuit. I appreciate the work they have done on this nomination. I also appreciate the personal comments the senior Senator from Alaska made, going back to her law school days. I think sometimes we forget that these judicial nominees are real people and they have a real life and are a real part of the community. So I appreciate that.

I yield back the remainder of the time on our side.

Ms. MIKULSKI. Mr. President, I yield back all the time on the Republican side.

THE ACTING PRESIDENT pro tempore. All time is yielded back.

LEGISLATIVE SESSION

THE PRESIDING OFFICER (Mr. BROWN of Ohio). Under the previous order, the Senate will resume legislative session.

The Senator from Arizona, Senator MCCAIN, is recognized for 30 minutes.

THE MILITARY-INDUSTRIAL-CONGRESSIONAL COMPLEX

Mr. MCCAIN. Mr. President, shortly we will begin debate on the conference report of the Defense authorization bill, the 50th year the Congress of the United States has authorized the equipment, the programs, and all that is necessary to defend this Nation's security.

I want to talk today about a very important aspect of our national security, and that is the problem we are having with out-of-control spending which has, in its own way, endangered our national security as almost any threat that we face. It is unsustainable, it is unacceptable, and it is a stain on our Nation's honor.

Fifty years ago, on January 17, 1961, Dwight David Eisenhower bid farewell to the Nation as the President of the United States. At the heart of his farewell address was a warning, one keenly insightful in its sense how, in a way new to the American experience, an immense military establishment and large arms industry had developed in the 20th century post-war period. While acknowledging the need for a strong national defense, President Eisenhower called for the American people to understand the grave implications of this new aggregation of political and industrial power. In particular he warned:

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

The 50th anniversary of President Eisenhower's address gives us an opportunity to carefully consider have we considered President Eisenhower's admonition. Regrettably and categorically the answer is no. In fact, the

military-industrial complex has become much worse than President Eisenhower originally envisioned. It has evolved to capture Congress. So the phenomenon should now rightly be called the military-industrial-congressional complex.

On July 16, 2009, in a speech to the Economic Club of Chicago, then-Secretary Gates described the military-industrial-congressional complex in this way:

First, there is the Congress, which is understandably concerned . . . about protecting jobs in certain states and congressional districts. There is the defense and aerospace industry, which has an obvious financial stake in the survival and growth of these programs. And there is the institutional military itself—within the Pentagon, and as expressed through an influential network of retired generals and admirals. . . .

One aspect of the military-industrial-congressional complex I have focused on considerably over the last few years is its role in congressional earmarks, congressional pet projects, unwanted by the administration but amounting to billions of dollars annually that frequently take on a life of their own in a way that continues to waste taxpayer resources for years and sometimes decades. In the military-industrial-congressional complex, earmarks are the currency of corruption.

Another manifestation of the military-industrial-congressional complex I have called attention to is the revolving door that exists between the Pentagon and the defense industry. In 1969, then-Senator William Proxmire said this about the revolving door in the context of defense procurement:

The easy movement of high-ranking military officers into jobs with major defense contractors and the reverse movement of top executives in major defense contractors into high Pentagon jobs is solid evidence of the military-industrial complex in operation. It is a real threat to the public interest because it increases the chances of abuse. . . . How hard a bargain will officers involved in procurement planning or specifications drive when they are one or two years from retirement and have the example to look at over 2,000 fellow officers doing well on the outside after retirement?

Probably the most recently publicized example of the revolving door between the Department of Defense and private industry and the prevalence of the military-industrial-congressional complex in the Department's planning and procurement processes is its mentorship program. In its most recent story in a series exposing this program, USA Today reported that the Air Force allowed a retired general officer who was then serving as an executive in the Boeing Company to participate as a mentor in a war game involving the aerial refueling tanker that Boeing was at the same time competing to build for the Air Force under a multibillion dollar procurement program. Over the last 2 years, I have exercised keen oversight of the mentorship program, which I understand has been essentially shut down under the weight of newly promulgated

public disclosure requirements. In other words, former general and flag officers serving as Department mentors prefer to exit the program rather than publicly disclose their corporate affiliations and compensation.

I ask unanimous consent my most recent investigative letter on the issue be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MCCAIN. The aspect of the military-industrial-congressional complex I would like to focus on relates to how the Pentagon buys its very largest weapons systems. That covers the top 100 or so of the Defense Department's weapons procurement programs into which taxpayers have invested to date about \$1.7 trillion. In particular, I would like to focus on how the military-industrial-congressional complex has kept even some of the most poorly performing programs funded, siphoning off precious resources even while they go over budget, face years of schedule delays, and fail to deliver promised capability to the war fighter.

To be clear, the military-industrial-congressional complex does not cause programs to fail, but it does help create poorly conceived programs, programs that are so fundamentally unsound that they are doomed to be poorly executed. It does help keep them alive long after they should have been ended or restructured.

By "poorly conceived," I mean major programs that are allowed to begin, despite having insufficiently defined requirements, unrealistic cost or schedule estimates, immature technology or too much manufacturing and integration risk or unrealistic performance expectations.

By "poorly executed," I am referring to programs that poorly perform because of, among other things, unanticipated design, engineering, manufacturing or technology problems. These sorts of programs should never have been started to begin with or should have been significantly restructured or terminated at the end of the day. Yet through the influence of the military-industrial-congressional complex, they are allowed to enter the defense procurement process and to persist, often under the guise of a concurrent development acquisition strategy and executed under cost-plus contracts.

Specifically, the military-industrial-congressional complex helps ensure that poorly conceived programs get on rails and stay there with production money when they are supposed to be still in development. For industry and many of their sponsors in the Pentagon and on the Hill, that is desirable because it is far more difficult to restructure or terminate a production program, even one that is performing poorly, than one that is in development. In the military-industrial-congressional complex, if excessive concurrency is a drug, then the cost-plus contracts used to facilitate it are its delivery vehicles.

Over the last decade or so, what I have described has resulted in a massive windfall for industry. But for the taxpayer and the war fighter, it has been an absolute recipe for disaster.

With the Federal budget deficit having hit \$1.3 trillion for the 2011 budget year and facing the fact that the defense budget will likely not grow to any significant extent in the near term, we in Congress must be mindful of how the military-industrial-congressional complex can negatively affect decisions to buy and keep major weapons systems.

How does the military-industrial-congressional complex help create problem programs and keep them going long after they should have been canceled or restructured? A review of some of the problems with the original Air Force tanker lease deal is instructive. From that first attempt by the Air Force to replace its aging airborne tanker aircraft, which started nearly a decade ago, we now know, very early in the planning of a major defense acquisition program, senior officials from industry and the relevant services work with senior Members of Congress to ensure that the economic and therefore political benefits of the programs would be distributed widely among key congressional States or districts. That ensures long-term political buy-in and support.

How much could the military-industrial-congressional complex's negative influence ultimately cost taxpayers? Once again, consider the original tanker lease deal as just one example.

That deal would have had new aerial refueling aircraft developed under a cost-plus contract, which exposes the taxpayer to and protects the contractor from the negative impacts of cost overruns and schedule delays. Once developed, those new tanker aircraft were supposed to be leased—leased, not bought outright—from a sole-source contractor, as provided under a multibillion dollar earmark stuck in a defense appropriations bill, without having been vetted by the administration or reviewed by the relevant congressional oversight committees.

That unusual acquisition strategy was based on a case that the Air Force presented at that time, which the deal's congressional sponsor roundly endorsed, that the legacy fleet of tankers needed to be replaced urgently. Needless to say, that case was proven false. There can be no doubt that the original tanker lease deal was a classic creation of the military-industrial-congressional complex.

When we compare the likely costs of the sole-source tanker lease with the costs of the recently concluded tanker competition, which calls for fixed-price development and a purchase under full and open competition, the difference is dramatic. According to recent analysis by the Department of Defense, the original tanker lease deal would have, over the lifecycle of the aircraft, cost

taxpayers billions of dollars more for a less-capable airplane. Those billions that could have been lost under the original tanker lease deal are effectively the cost associated with the military-industrial-congressional complex when it is allowed to run unchecked and unchallenged, and they are, particularly in the current fiscal environment, utterly unsustainable.

The lesson of the original tanker lease deal is that the powerful combination of interests that comprise the military-industrial-congressional complex can be strong enough to both give birth to procurement programs that should never have been started in the first place and nurture programs that should have been killed or fundamentally restructured early on to the grave detriment of the taxpayer and our service men and women.

While over the last couple years former Secretary Gates ended some of the most poorly performing major programs in the defense enterprise, the situation remains serious. The new national military strategy calls the growing national debt a “significant security risk,” and as the Government Accountability Office noted in its March 2011 report, since 2008, the total acquisition costs of the Pentagon’s major defense acquisitions programs in its current portfolio has increased by \$135 billion, about half of which is attributed to pure cost growth and the other half due to cuts in the intended number of weapons we plan to buy.

It should not come as a surprise that as a result, about half the Pentagon’s very largest weapons procurement programs exceed cost-performance goals agreed to by the Pentagon, the Office of Management and Budget, and the Government Accountability Office. In fact, the Government Accountability Office’s March report found that about one-third of all major weapons systems since 1997 have had cost overruns of as much as 50 percent over their original projections.

Noting that “the costs of developing and buying weapons have historically been, on average, 20 to 30 percent higher” than Pentagon estimates, the Congressional Budget Office recently projected that in addition to health care, higher costs for weapons systems will increase the Pentagon budget by about \$40 billion over the next 5 years.

Congress and current leadership at the Department of Defense have tried to attack these problems, but they have not been successful in changing the prevailing culture yet.

For example: After several attempts to change the Pentagon’s buying approach—which, as CBO noted rarely, if ever, correctly predicts how much a program will likely cost—the Weapons Systems Acquisition Reform Act of 2009 created the Office of Cost Assessment and Program Evaluation to analyze the cost of new programs and why they fail. It also required the Pentagon to keep closer tabs on technology maturity and emphasized testing new

weapons before they entered production.

As a result of that act, some newer major programs are not making the mistake of relying on overly optimistic cost estimates provided by the contractor or staking too much production money too early—before critical technologies, design drawings, and manufacturing processes have stabilized and matured. But even this new law will be judged well only if the Pentagon can demonstrate some success with its largest acquisition programs, even those that went into development before the law’s enactment.

The F-35 Lightning II Joint Strike Fighter Program is a good example of one such program. Last week I spoke at length about this program, so today I will keep my remarks about it brief. Currently, the F-35 is the Pentagon’s largest weapons procurement program. It was originally intended as a revolutionary, affordable solution to the Navy, Marine Corps, and Air Force’s tactical aviation needs for the future. With three different versions of the aircraft for each service and commonality in design among those versions, the Pentagon sold this program as a fifth generation strike fighter that would—more so than any other major defense procurement program—be cost effectively developed, procured, operated, and supported.

According to the Pentagon, the program “was structured from the beginning to be a model of acquisition reform.” This has not been the case.

When the program was first launched, the Pentagon planned to buy over 3,000 Joint Strike Fighters, but the development effort was performed so poorly that we can now only afford to buy 2,457. Given recent delays in restructuring rules, that number could go down further. To date, the total cost to buy all of the aircraft as intended has grown by about \$150 billion to \$385 billion. The cost of each Joint Strike Fighter is now 80 percent over the original baseline estimate, and that is expected to increase. It would be hard to buy a car at 80 percent over the original sticker price without looking for major tradeoffs.

Currently, the Joint Strike Fighter costs an average of about \$133 million each, and that is without an engine. We have invested about \$56 billion in R&D costs in this project through fiscal year 2010.

Over the nearly 10-year life of the F-35 program, Congress has authorized and appropriated funds for 135 of these aircraft. But as of today, the program has delivered just 20 flying aircraft with most of them being used for testing. Early production aircraft just started to be delivered a few months ago—3 years late.

The main problem with the program has been this: Before the Pentagon went all in on the F-35 program, it never understood the risk associated with developing and integrating the F-35’s critical technologies and manufac-

turing each version of the plane, much less how much money and time would be needed to overcome these risks. So ever since the Pentagon awarded Lockheed Martin a contract to develop the Joint Strike Fighter contract in 2001, and despite having signed several follow-on contracts for blocks of production aircraft, the program has effectively been stuck in development. Experts call what the Pentagon has been trying to do “concurrent development.” I call it a mess.

Using a concurrent development strategy to procure high-risk weapon systems that promise generational leaps in capability when, one, their underlying design is unstable; two, the risks associated with developing their critical technologies and integration are not fully known; and, three, their manufacturing processes are immature is a very bad idea. Trying to do this under cost-plus contracts is a recipe for disaster.

In July 2011, the Department revealed that the cost for the first three lots of early production aircraft amounting to 28 aircraft bought under cost-plus contracts exceeded by about \$1 billion the original estimate of about \$7 billion. The Department also indicated that the taxpayers’ share of this overrun amounted to \$771 million. The program’s prime contractor would absorb approximately \$283 million. By the way, that program’s prime contractor, Lockheed Martin, declared record profits of \$3 billion last year.

Moreover, just a few days ago, the Department indicated the cost of the fourth lot of the early production aircraft bought for the first time in the program’s history under a fixed-price-type contract may be as high as 10 percent over that contract’s \$3.46 billion target cost. This is a \$350 million overrun with only about 40 percent of that work completed to date. This suggests the costs of the program have still not been contained despite 2 years of concentrated effort by the Pentagon to bring costs under control.

Just last week the executive officer of the Joint Strike Fighter Program indicated in a media interview that the Joint Strike Fighter Program needs to slow down production and deliveries of the aircraft. He attributed this to the need to open the aircraft and install fixes to numerous structural cracks in “hot spots” that the program has discovered in the plane over the last year or so. He estimated the work needed to remedy these cracks could add an additional \$3 million to \$5 million per aircraft.

From these comments, I understand the overlap between development and production, called “concurrency,” that persists in the program is still too great to assure taxpayers they will not have to continue paying for costly redesigns or retrofits due to discoveries late in production.

My frustration—and, more importantly, the taxpayers’ frustration—

with the chronic failure of this program to deliver required combat capability on time and on schedule cannot be overstated. This frustration is conveyed well in a provision in the conference report accompanying the Fiscal Year 2012 National Defense Authorization Act that would require that the sixth lot of early production aircraft be procured on a firm fixed-price basis. Apparently, the fixed-price contract used for the fourth lot, which provides the overruns between a "target cost" and "ceiling price" be shared between the government and prime contractor is failing to incentivize the contractor to control its costs, so tougher measures are warranted. We should all hope they work.

Another example is the Marine Corps' Expeditionary Fighting Vehicle, the EFV. The Marine Corps and General Dynamics originally promised that the EFV was going to be the most advanced and operationally effective amphibious assault vehicle ever produced. It was originally designed to be an over-the-horizon platform to protect the Navy ships from mines and shore-based missiles and maximize our flexibility and the enemy's difficulty in planning a defense.

The EFV was intended to be capable of being launched from a ship up to 25 miles away from shore and speed to a landing zone at 25 knots. Once ashore, the EFV would then be able to travel at speeds equal to those of the Abrams tank. The Marines were originally supposed to buy over 1,000 of these vehicles, which were to be initially operable by 2010, at a total cost of \$7.3 billion. Needless to say, things did not turn out that way.

Prototypes of the EFV were tested and were about 1,900 pounds too heavy and blew past original cost estimates for research and development. Testing also revealed significant problems in terms of limited visibility, excessive noise, breakdowns in the loading system of the 30-millimeter gun, and concerns about the hull's vulnerability to IED attacks.

From its start in 1996 to about 2007, the Marine Corps and General Dynamics said, "Don't worry." But at the end of the day, the program's cost rose by 55 percent to over \$14 billion, and initial capability was pushed back to 2016. At the start of this year, the cost of each EFV was expected to be as much as \$23 million, and the estimated cost to operate and maintain the vehicle went up with the increase in that price.

The Commandant of the Marine Corps estimated that the EFV would consume over 90 percent of the Marine Corps' total ground combat vehicle budget. Against that backdrop, former Secretary Gates and the Commandant called for this program to be terminated. Unfortunately, the taxpayers had invested about \$3 billion and the Marine Corps had waited 15 years for an improved amphibious vehicle that simply became too costly to buy.

Another example of a legacy acquisition program in trouble is the V-22 Os-

prey. Inspired by the failure to rescue hostages from Iran in 1980, the V-22 was originally designed to be a revolution in vertical takeoff aircraft. It was intended to improve, beyond anything currently in the arsenal, the ability of the Marine Corps' and our Special Forces' capability to get in, get out, and resupply from long range at high speeds in hostile landing zones.

What we ended up with has been great expectations and enormous costs. Since it was first deployed, the Marine Corps' version of the V-22 has had a mission-capable rate in the middle to high 60-percent range as compared to the latest version of the Army's heavy-lift helicopters, the CH-47s, which had readiness rates in the high eighties to low nineties. During its recent deployment in Afghanistan, in fact, the V-22's engine saw a service life of just above 200 hours, well short of the 500 to 600 hours that the program's managers originally estimated. That has caused the cost-per-flying hour to more than double to over \$10,000 an hour as compared to about \$4,600 per hour for the much older CH-46 it was intended to replace or about \$2,600 per hour for a new, modern MH-60 Blackhawk helicopter.

When it is not being repaired, the V-22 performs its missions impressively, but the sustenance cost of keeping the V-22 flying is eating up the Marine Corps' budget and causing aircraft maintainers to work much harder than should be required for a brandnew aircraft. While the V-22 program was supposed to cost just over \$39 billion, independent estimates are that it will come in at \$56 billion, a 43-percent increase.

Mr. President, I ask unanimous consent for 10 additional minutes.

The PRESIDING OFFICER. Is there objection? Without objection, so ordered.

Mr. MCCAIN. The price per aircraft has risen by 186 percent from \$42.8 million to \$122.5 million. You will notice this hybrid helicopter airplane's unit cost is approaching that of the troubled F-35 priced at about \$133 million a copy, as I mentioned earlier. But the budget-strapped Marine Corps may have to afford both of them.

Recently, the Marine Corps conceded that over the last 3 years, the lifetime cost of operating its V-22 aircraft had increased 64 percent to \$121.5 billion.

I want to talk about military space procurement for a minute. They are among the most notorious for chronically performing poorly.

The Space-Based Infrared System program is a particularly good example. It has been a problem since its inception in 1996. In fact, 5 years into the program—in 2001—an independent review cited the program as "too immature to enter the system design and development phase" and observed that the program was based on faulty and overly optimistic assumptions with respect to, among other things, "management stability and the level of understanding requirements."

That was 2001, when it was determined that total program costs could

exceed \$2 billion—a 70-percent increase in cost. And, here we are today, 10 years later, and the system has still not achieved its objectives. In fact, it was just launched, for the first time, recently, on May 7, 2011.

Originally estimated to cost \$2.4 billion, it is now expected to cost nearly \$16 billion, roughly 7 times the initial estimate.

The Defense Department reported to Congress recently that the next pair of these satellites built by Lockheed Martin could cost \$438 million more than previously estimated and could be delivered a year late. Many of the space programs are facing these same kinds of overruns.

In the area of military space procurement, the Air Force's Advanced Extremely High Frequency satellite is worth mentioning. This system of satellites is supposed to replenish the existing Milstar system with more robust and secure communication capabilities for strategic and tactical warfighters. While the first of six of these was launched in August 2010, glitches with its thruster delayed the satellite from reaching its planned orbit by more than a year and significantly affected when the other two satellites will launch. In connection with how the prime contractor, Lockheed Martin Space Systems, has performed on this program, the Air Force penalized Lockheed Martin by reducing its award fee under the contract by \$15 million.

One space acquisition program I have focused on is the Evolved Expendable Launch Vehicle Program. Largely because of lack of competition and the Department's reliance on a sole incumbent provider, by some estimates EELV's costs may increase by more than 50 percent over the next 5 years.

I don't want to overlook the Army. Among all services the Army has had the poorest record of pumping billions of dollars into weapons systems that were never deployed. A recent Army study indicated that since 1995, almost 40 percent of research dollars the Army spent did not result in the procurement of any product. The Army spent at least \$32 billion on development, testing, and evaluation of 22 weapons programs that were later canceled—almost a third of its budget for creating new weapons. Every year since 1995, the Army has spent \$1 billion on doomed programs. Since 2004, canceled Army programs have consumed between \$3.3 billion and \$3.8 billion. This represents an average of 35 to 45 percent of the Army's annual budget for development, testing, and engineering when factoring in the cancellation of the hugely expensive Future Combat Systems Program.

This brings us right to the FCS Program. To say that this program was a spectacular, shameful failure would not do it justice. First envisioned in 1999 by then-Army Chief of Staff GEN Eric Shinseki, FCS was intended to be a revolution in capability—the centerpiece in the Army's effort to transform

itself into a lighter, more modular, and more deployable fighting force. Originally and erroneously executed under a type of contract more fitting for smaller programs, the FCS was supposed to develop 18 manned and unmanned ground systems, including sensors, robots, UAVs, and vehicles, all connected by a complicated mobile electronic network. When work began on this program in 2000, the Army estimated that the first combat units would be equipped by 2011 and that all the Army's ground combat formations would be equipped by 2032. The Army initially estimated the entire effort would cost about \$160 billion.

By 2006, independent cost estimators at the Pentagon pegged total procurement costs at upwards of \$300 billion. And, from there, with the assistance of a fundamentally flawed fee structure that was not focused on objective results, FCS total costs kept growing. To make a long story short, in April 2009, then-Secretary Gates terminated most of the program and the problem.

While the Army has had its problems, the Navy's Littoral Combat Ship is another example of a fundamentally flawed acquisition process. Originally conceived by former Chief of Naval Operations Vern Clark as a revolutionary, new, affordable class of surface combatant—about the size of a light frigate or Coast Guard cutter—the LCS was to be able to conduct shallow-water and near-shore operations.

The first two LCS contracts set the cost of the sea frame at \$188 million each. After spiking to over \$730 million, the cost is now about \$400 million per hull. In December of 2010, the Pentagon's chief tester gave LCS poor performance ratings, saying that "LCS is not expected to be survivable in terms of maintaining a mission capability in a hostile combat environment."

I continue to be very troubled by the Navy's decision late last year to set aside then-pending competition and award contracts to each of the bidders on this program.

The F-22 raptor program. The F-22 was supposed to maintain air superiority in the face of the Soviet threat during the Cold War. The F-22 obtained full operational capability 20 years later, well after the Soviet Union dissolved. When it finally emerged from its extended testing and development phase, the F-22 was recognized as a very capable tactical fighter, probably the best in the world for some time to come. But plagued with development and technical issues that caused the costs of buying to go through the roof, not only was the F-22 20 years in the making, but the process has proved so costly that the Pentagon could ultimately afford only 187 of the planes rather than the 750 it originally planned to buy. To make a long story short, the F-22 has not flown in combat since its inception.

The DDG-1000 Zumwalt Class Destroyer was supposed to cost \$1.1 billion each. It is now expected to cost \$3.5 billion each.

The Airborne Laser effort is to be canceled. The fantastic story of the VH-71 new Presidential Helicopter Replacement Program was canceled only after it became more expensive than a full-size 747.

What can we do?

I know it is time for us to get on with the Defense authorization bill.

We need to have transparency. We need to have accountability. We have to use competition to encourage industry to produce desired outcomes and better incentivize the acquisition workforce to do more with less. We have to do a lot of things. We have clearly failed to abide by the warning President Eisenhower issued in his speech 50 years ago, but I do find some comfort that times of fiscal restraint and austerity can drive desired change, even in the face of daunting systemic obstacles such as the military-industrial-congressional complex. We must do better.

Mr. President, I yield the floor. I thank my friend from Michigan for his indulgence.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 1, 2011.

Hon. LEON PANETTA,
Secretary of Defense,
Pentagon, Washington, DC.

DEAR SECRETARY PANETTA: I was very troubled to read recently in USA Today that the Air Force allowed a retired general officer who was then-serving as an executive in The Boeing Company to participate as a "mentor" in a war game involving the aerial refueling tanker that Boeing was at the same time competing to build for the Air Force under a multibillion dollar procurement program. This, in my view, warrants serious inquiry.

According to the article, the retired general officer previously served as the chief of U.S. Transportation Command and Air Force Mobility Command, which would have given him keen insight into the Air Force's plans to replace its aerial refueling tanker fleet. It appears that what this mentor did for the Air Force in this case directly related to one of Boeing's largest potential contracts with the Air Force. This makes the story particularly alarming. No less disturbing is that the Air Force apparently withheld publicly disclosing this information from a Freedom of Information Act (FOIA) request for approximately two years.

This latest revelation plainly validates my concerns that I conveyed last year about the potential for conflicts-of-interests associated with military mentor programs. It is also another example of the revolving door between the Department and private industry and the prevalence of the military-industrial complex in the Department's planning and procurement processes, which has plagued the Air Force's attempts to replace its aerial refueling tanker fleet from day-one.

Although there appears to be general comfort that the contract for the KC-46A was awarded properly and that the contracting strategy for the development of these tankers is viable, whether any misconduct somehow biased the program at its inception towards a particular outcome must be taken very seriously.

With this in mind, please answer the following questions.

1. After the individual cited in the article, retired Lieutenant General Charles Robert-

son, retired from the Air Force, during what period of time did he serve as an advisor, consultant or mentor, or in any other similar capacity, to the Air Force?

2. Describe, with specificity, General Robertson's duties, responsibilities and activities while serving in the foregoing capacity during this period.

3. Identify, with specificity, what project(s) General Robertson served on in the foregoing capacity, including but not limited to, as a mentor.

4. Describe, with specificity, what relationship these projects had with any program or process in which Boeing had a direct or indirect interest.

5. Describe, with specificity, the activity cited in the article described above (i.e., a "war game") and what relationship, if any, that this activity had with the pending Air Force program to replace its aerial refueling tanker fleet.

6. Describe what was happening with the Air Force's program to replace its aerial refueling tanker fleet while the foregoing activity was conducted.

7. What direct or indirect input or influence did General Robertson have in the outcome of the activity for which he was serving as a mentor (or in any similar capacity) or the overall program or process that this activity was intended to support?

8. How much per year and in total compensation was General Robertson paid for his service as an advisor, consultant or mentor, or in any other similar capacity, to the Air Force?

9. Please provide a copy of his employment contract(s) with the Air Force for his service in the foregoing capacity.

10. Explain why it reportedly took two years to provide the information described above where this information was responsive to a properly presented FOIA request.

11. What is the current status or the Department of Defense's mentor program?

12. If the program is still extant at all, what controls are in place today that will ensure against conflicts-of-interests and the appearance of impropriety by its participants?

Thank you for your cooperation and your attention to this serious matter.

Sincerely,

JOHN MCCAIN,
Ranking Member.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 1540, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1540), to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, after full and free conference, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of December 12, 2011.)